

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF CITY OF NORTH KANSAS CITY, MISSOURI**

These Comments are filed by City of North Kansas City, Missouri in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, THE City of North Kansas City, Missouri believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**CABLE FRANCHISING IN OUR COMMUNITY**

**Community Information**

The City of North Kansas City is a third-class city in the State of Missouri with a population of approximately 4,700. Our franchised cable provider is Time Warner, Incorporated. Our community has negotiated cable franchises since 1980.

**Our Current Franchise**

Our current franchise began on July 22, 1997 and expires on July 31, 2012. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 3% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have no channels (or capacity) devoted to public access; no channel (or capacity) devoted to educational access; and 1 channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

#### City Government Channel

The following is being provided by the cable operator as an In-Kind service:

The cable operator is required to provide one (1) government access Channel for use by the City to present local non-commercial programming of interest of Subscribers in the City. The City may provide the service itself, or may designate another agency or person to provide this service for the City.

The cable operator cooperates with the City in reviewing equipment needs and obtaining equipment at competitive prices. On the fifth and tenth anniversaries of the effective date of the Franchise agreement, upon request of the City, the cable operator and the City shall meet to review the cable operator's obligations and to mutually agree on any modifications thereto. All equipment provided by the cable operator to the City is to be used solely for the operation of the government channel. Maintenance and repairs on equipment used in connection with the government channel that are not covered by equipment warranties are performed by the cable operator. The cable operator is required to provide up to 16 hours of technical assistance in the first year following the upgrade, and 8 hours a year thereafter of technical assistance in installing and maintaining such equipment and up to 25 hours per year of production training. The cable operator is required to cooperate with the City or its designee to maintain the existing interconnection needed to present the government channel on the system and any instruction or assistance regarding the acquisition, maintenance and use of any studio and production equipment that may be obtained for that purpose, by the cable operator or by the City. The cable operator is required to provide at no cost to the City the required equipment to connect the City's existing cablecasting facilities to the system headend. Equipment provided to the City enables the City to engage in sending video systems and their accompanying audio signals. If requested, the cable operator may make available to the City programming appropriate cablecasting on the government channel. This programming may be programming cablecast by the cable operator on other channels. Programming provided by the cable operator shall remain the property of the cable operator.

The cable operator may not export the government channel without written permission from the City. However, should the cable operator interconnect the System to cable communications systems operated by the cable operator in other municipalities in the Kansas City area, the cable operator may carry on such other cable communications

systems the government Channel provided under the terms of our current Franchise agreement.

The government Channel may not be eliminated by cable operator without written authorization by the City.

The Channels and capacity provided pursuant to our current Franchise are to be used only for non-commercial educational and governmental access purposes. In addition, the facilities provided pursuant to our Franchise may not be connected with any site other than those user locations specified in our current Franchise agreement, and may not be used to transmit or receive any communication (in whatever form whether video, audio, data, voice or otherwise) to or from any place other than the user locations specified in our current Franchise agreement including without limitation, to any site outside the City, to any site used for commercial purposes, or to any site which is a facility of a local or long-distance telephone company without the consent of the cable operator.

Though the City is not using its I-Net facilities at this time, the City's franchise contains the following institutional network ("I-Net") requirements:

#### Institutional Network

Upon completion of the System upgrade, the cable operator shall connect the following facilities as receive-only sites for the North Kansas City, Missouri institutional network (I-Net) provided that (1) the designated manager of each I-Net user group consents to the connection of the I-Net facilities to that location, and (2) Cable operator then operates the cable system in North Kansas City, Missouri:

- North Kansas City Hospital, 2800 Hospital Drive;
- North Kansas City Fire Station, 710 E. 18<sup>th</sup> Avenue;
- North Kansas City Police Department, 2010 Howell Street; and
- City Hall, 2010 Howell Street.

A. Additional user locations. The I-Net shall be extended to additional user locations upon written request by the Franchise Administrator. Such extension shall be provided at Cable Operator's expense if such facilities are located within 200 feet from the portion of the System carrying the I-Net, or any separate dedicated I-Net, or any separate dedicated I-Net facility, will be added for a predetermined time and material charge to be paid by the user prior to the date such work is to be commenced by Cable Operator.

B. Institutional network capabilities. The I-Net shall consist of 6 MHz of transmission capacity on the system, on a separate dedicated facility, or both, to permit the transmission of signals to, from and among the user locations. The users of the I-Net shall be solely responsible for the cost and expense of all equipment and materials required for the interface with the I-Net at the user locations, including by way of

illustration, laser transmitters, laser receivers, modulators, demodulators, processors, and routing switches. Cable Operator will provide reasonable amounts of consulting advice and assistance to the users of the I-Net for the purpose of identifying the appropriate materials and equipment for the interface with the I-Net. Notwithstanding any other provision of the Franchise Agreement, Cable Operator shall not be required to provide a free upstream transmission path from Subscribers' premises.

- C. Additional outlets. There will be no monthly charge for the first I-Net outlet at the I-Net user locations, but Cable operator may charge a monthly additional outlet charge for additional I-Net outlets. Additional outlets shall be installed or existing outlets shall be relocated for a predetermined time and material charge for each additional outlet.
- D. Relocation. Should any of the present or future user locations relocate subsequent to their inclusion in the I-Net, the user shall pay a predetermined time and material charge for relocation of the I-Net.
- E. Technical specifications.

The I-Net shall be capable of meeting the following distortion parameters:

Carrier to RMS Noise	47 dB
Carrier to Second Order	53 dB
Carrier to Cross Modulation	53 dB
Carrier to Composite Beat	53 dB

The frequency versus gain response of a single channel as measured across any 6 MHZ spectrum shall not exceed +/- 2dB.

The frequency versus gain response of the entire passband shall not exceed  $n/10+2\text{dB}$  for the entire system where N is the number of amplifiers in cascade.

The I-Net shall be designed such that a minimum all technical specifications of this Franchise agreement are met.

The system shall be designed such that no noticeable degradation in signal quality will appear at the institutional terminal.

The City's franchise contains the following requirements regarding emergency alerts:

Emergency Services. Subject to applicable law, Cable operator shall incorporate into its System the capability to permit the City or City's designated agency, in times of

emergency, to override the audio portion of all Channels simultaneously, except where doing so would violate applicable law. Cable Operator shall cooperate with the City or City's designated agency in the use and operation of the emergency alert override system as provided under applicable law.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

#### Grantee Office/Access

##### Reports

- A. Within ninety (90) Days after the close of cable operator's fiscal year, cable operator shall submit a written annual report, in a form approved by City, including, but not limited to, the following information:
  - a. A summary of the previous year's activities in the development of the System in the City, including, but not limited to, additions, deletions, or improvements begun or discontinued during the reporting year.
  - b. A list of cable operator's General Partners and Managing General Partners, and any changes thereof.
- B. The Grantee shall, upon request of City from time to time, or in response to Subscriber inquiries, complaints or disputes, provide to City a history of trouble complaint information, including cable operator's responses, on any individual Subscriber subject to applicable law, including, without limitation, the privacy provisions of the Act.

#### Maintenance and Complaints

- A. Cable Operator shall furnish, render and sell cable service to its Subscribers in a manner which conforms to the FCC Customer Service Standards, as amended from time to time.
- B. Cable Operator shall render efficient cable service, make repairs promptly and in a workmanlike manner, and interrupt service only for good cause and for the shortest time possible.
- C. Cable Operator's office staff will maintain regular office hours from Monday through Friday (exclusive of company holidays). Complaints concerning billing, employee courtesy, programming, safety or Cable Operator's operational policies shall be handled during those hours.

- D. Cable Operator shall maintain a sufficient repair force of competent technicians who shall respond to Subscriber complaints, loss of cable service, or requests for cable service. Complaints shall be resolved expeditiously, but in all cases complaints shall be resolved within seven (7) days from the date of the initial complaint, to the extent possible. No charge shall be made to the Subscriber for this service, except for the cost of repairs to Cable Operator's equipment or facilities damaged or impaired by Subscriber, and the account of any Subscriber who requests credit for an interruption of service shall be credited a prorated share of the monthly charge for the service is said Subscriber is without service of any kind for any reason, except Subscriber-inflicted damages to Cable Operator's equipment or impairment of service, for a period exceeding twenty-four (24) hours.
- E. All Subscribers and members of the general public in the City may direct inquiries, complaints, and disputes regarding Cable Operator's service performance to the Franchise Administrator. The Franchise Administrator shall coordinate with Cable Operator to obtain an answer to an inquiry or a resolution to a complaint or dispute. Upon the request of either Cable Operator or the complaining party, the Franchise Administrator shall act as a board of review of such complaints or disputes, and recommend action for resolution. Such recommendation shall not be binding on either party.
- F. In the event a complaint or dispute is determined by the Franchise Administrator to be a potential violation of this Ordinance, and after written notification to Cable Operator of that determination, the procedures set forth in the Franchise agreement under Procedures for Correcting Violations shall apply.

The City's franchise contains the following reasonable build schedule for the Cable Operator:

Initial System Installation Schedule

- A. Cable Operator shall construct the cable system in all census tracts of the City where fifty (50) or more dwelling units are passed for each street mile in the public right-of-way. Construction shall be completed no later than one (1) year after the effective date of this franchise Agreement plus any time allowed under subsection C hereof.

If future census information identifies new census tracts or existing census tracts as having fifty (50) or more dwelling units per street mile in the public right-of-way, the Cable operator shall immediately make plans to provide cable service in such census tract, in a reasonable time period consistent with its overall construction schedule.

The "B" cable as identified in Section 14 of the Agreement shall be constructed simultaneously with the co-located "A" cable.

- B. Within thirty (30) days of the effective date of this ordinance, the Cable operator shall diligently pursue acquisition of all necessary certificates, licenses and agreements and

permits which are required to construct a cable television system in the City. Within sixty (60) days of receipt of such certificates, licenses and agreements and permits the Cable operator shall provide the City with plans indication expected dates of installation of various parts of the cable system and shall commence construction of the cable television system. Thereafter, construction shall proceed so as to make service available throughout the City, as defined in Section 12 at the earliest possible time.

- C. The construction of the cable system and the activation thereof, shall not be deemed to be in default where delays are not caused by the Cable Operator and are due to war, insurrection, civil disturbance, strikes, lock-outs, riots, floods, governmental restrictions and priorities, embargoes, litigations, tornados, unusually severe weather or acts or failure to act of the City or any other governmental agency or entity. The time of performance hereunder shall be extended for the period of any delay or delays caused or resulting from any of the foregoing causes only with the written consent of the City, which consent shall not be unreasonably withheld.

The City's franchise requires that the cable operator currently provide service to the following areas of this community:

#### System Extension to New Subscribers

It is the policy of the City to make the cable system available to as many dwelling units as possible. The Cable operator shall extend said system to all areas with the limits of its franchise where a total of fifty (50) dwelling units or more are passed for each street mile in the public right-of-way. The mile shall not include the length of cable necessary for a service drop to the subscriber's premises. It is the intention of the parties by this Section to require that "pockets" of potential subscribers, regardless of their census tract location, separated from the cable distribution system be provided cable service even though one or more miles of cable would have to be constructed in areas where the density is less than fifty (50) potential subscribers per mile of public right-of-way, if the overall system extension would exceed the fifty (50) potential subscriber per street mile figure. In addition, the City may upon complaint from any potential subscriber residing in the City order the extension of the system to such potential subscriber after opportunity for hearing and notice to the Grantee. In such cases, the City in its discretion may order such extension to any such potential subscriber only upon a reasonable contribution from the potential subscriber to the cost of such extension.

In order to ensure that the City's residents have access to current telecommunications technologies, the City's franchise contains the following rebuild or upgrade requirements:

#### System Upgrade

By no later than 24 months after the effective date of the adopting ordinance, Cable operator shall complete a rebuild of its System, including installation of necessary and

appropriate subscriber equipment, pursuant to the provisions contained herein. Cable Operator shall use equipment used in high-quality, reliable, modem cable communications Systems of similar design. Within 90 days after the effective date of the adopting ordinance, Cable Operator shall provide to the City a plan for upgrading the current System indicating, at least, the construction schedule.

The upgrade shall provide Residents with a technically advanced and reliable cable communications system. The System shall operate with 750 MHZ of bandwidth, capable of delivering a minimum of 110 Channels of programming. It shall deliver a minimum of 60 Channels upon completion of the upgrade. It will have a return capacity of 5-30 MHZ. The design will provide the benefits of proven 110-Channel electronics while positioning the System to permit greater Channel capacity and the provision of additional services as they become technically and economically feasible. A purpose of this upgrade, in addition to increasing the technical capabilities and reliability of the System, is to provide the capacity for increased Channels available to Subscribers.

The City's franchise contains a "most-favored-nations" provision which states the following:

Franchise Non-exclusive

The adopting ordinance is not exclusive and the City reserves the right to grant a similar franchise to any other person at any time to operate a system throughout the City in its entirety. In the event the City grants a similar franchise or itself provides cable service on terms and conditions that are more favorable or less burdensome to the second or subsequent grantee than the terms and conditions of the adopting ordinance, then the more favorable or less burdensome terms and conditions of the other franchise or franchises shall be deemed made for the benefit of Cable Operator, shall be incorporated in this Ordinance by reference and shall be binding thereafter on both the City and Cable operator.

The City's franchise contains the following insurance and bonding requirements:

Liability Insurance

- A. Cable operator shall maintain, throughout the term of the adopting ordinance, and any extensions or renewals thereof, liability insurance insuring Cable Operator and City in the minimum amounts of:

\$500,000 for property damage per Person;  
\$1,000,000 for property damage per occurrence;  
\$1,000,000 for personal bodily injury per occurrence;  
\$1,000,000 for personal bodily injury per Person.



- B. At time of acceptance, Cable Operator shall submit a certificate of insurance to City confirming that a satisfactory policy is in effect, which policy shall be renewed on its anniversary throughout the term of the adopting ordinance and any extensions or renewals thereof. Any cancellation of insurance shall require thirty (30) days advance written notice to both the City and Cable Operator.
- C. Neither the provisions of this Ordinance nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City hereunder, shall be construed to excuse faithful performance by the Cable Operator or limit the liability of the Cable operator under the franchise issued hereunder or for damages.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The Cable Operator is required to pay a \$50 utility excavation fee per each instance. This fee applies to everyone.

The franchise agreement provides for the following enforcement mechanisms by which the City is able to ensure that the cable operator is abiding by its agreement:

#### Procedures for Correcting Franchise Violations

Should the City determine that Cable Operator has violated one (1) or more terms, conditions or provisions of the adopting ordinance, the City shall give written notice to Cable operator informing it of such alleged violation (a "Violation Notice"). Within fourteen (14) days from receipt of the Violation Notice, Cable operator shall give written notice to the City of the corrective action Cable Operator will take and begin said corrective actions. Such correction shall be accomplished within a reasonable amount of time. If, however, the Cable Operator disputes that a violation has, in fact, occurred, it shall give written notice to the City within fourteen (14) days of receipt of the Violation Notice that there is a dispute (a "Notice of Dispute"). Such Notice of Dispute shall stay the running of any performance or corrective deadlines pertaining to the matter in dispute.

- A. In the event the Grantee disputes that an alleged violation has occurred, the City Council shall hear Cable Operator's dispute at a regularly scheduled or specially called meeting, within twenty (20) days from the receipt of Cable operator's Notice of Dispute by the City. City and Cable Operator may present evidence at such meeting and call witness for specific testimony. The Franchise Administrator shall inform Cable Operator of the City Council's conclusions with seven (7) days from the date of hearing. The City Council will supplement its decision with written findings of fact.

- B. If the City Council determines that violation of the Ordinance has occurred, Cable operator shall have fourteen (14) days from receipt of written notice of the City Council's decision to notify the City of the corrective action to be take and begin correction of the violation, appeal the City Council's decision, or submit the matter to the arbitration of disinterested parties in accordance with this Ordinance. Such notice of intent to appeal or arbitrate shall be presented to the City in writing within fourteen (14) days of receipt of the Council's decision. Cable Operator's notice of appeal or arbitration shall stay the running of any performance or corrective deadlines pertaining to the matter.
- C. If the Council determines that a violation has not occurred, the matter shall be concluded.
- D. In the event the Cable Operator does not dispute that a violation has occurred, or elects not to appeal a decision upholding a disputed claim by either the City Council, and subsequently fails to begin corrective action with the fourteen (14) day period as required, or fails to correct the violation within a reasonable amount of time, the City shall then have the option of charging Cable Operator with a penalty in the amount of \$100.00 per twenty-four (24) hour day for every day the violation remains uncorrected, from the date the Cable Operator receives a written notice for the Franchise Administrator that the penalty will be levied.

#### Revocation and Removal

In addition to all other rights, powers and remedies reserved by the City, the City shall have the additional, separate and distinct right to revoke the adopting ordinance and all the rights, authority, power, privileges and permissions of Cable operator authorized herein as a result of and in response to the following events or reasons:

- A. Cable Operator becomes fiscally unable or unwilling to pay its debts, or is adjudged to be bankrupt, or discontinues providing service to the Residents of the City.
- B. Cable Operator attempts to or does practice any fraud or deceit in its conduct or relations under the adopting ordinance or in the process of being granted the rights, authority, power privileges and permission herein; or
- C. Cable Operator fails to correct a material violation of the adopting ordinance with thirty (30) days following written demand by City to effect such compliance and after the provisions of Procedure For Correcting Franchise Violations, have been pursued and completed.

#### The Franchising Process

The cable system(s) serving our community also serves many adjoining communities. In 1980 our community worked together with approximately two (2) other communities to issue a

cable franchise for American Cablevision of Kansas City, Inc. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process—to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: there are public hearing requirements in the event of sale or transfer of the cable franchise and in correcting franchise violations. Moreover, the franchise agreement provides for arbitration to resolve dispute, including public hearings.

### **Competitive Cable Systems**

The City of North Kansas City was approached by Adelphia in 2000 regarding the possibility of a cable franchise. Negotiations never commenced. Adelphia withdrew its application in 2001.

### **CONCLUSIONS**

The local cable franchising process functions well in City of North Kansas City. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

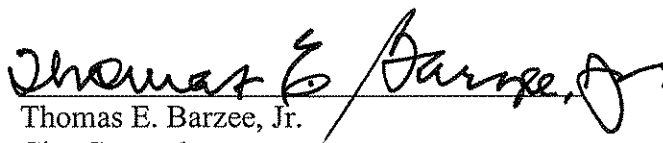
Finally, local franchises allow each community, including the City of North Kansas City's, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of North Kansas City therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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